

REMARKS

The present application has been reviewed in light of the Office Action mailed December 23, 2008. By the present amendment, claims 1 and 2 have been amended as to spelling and to further clarify the claimed subject matter.

Claim Rejections under 35 USC § 103(a)

Claims 1-8 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,282,829 issued to Hermes (hereinafter "Hermes") in view of U.S. Patent Application Publication No. 2004/0028502 to Cummins (hereinafter "Cummins"). Applicant respectfully traverses the Examiner's rejection for at least the reasons stated herein.

Applicant's independent claims 1 and 2 recite, in pertinent part, "A generally L-shaped surgical fastener...comprising...a base leg and a support leg... said base leg being selectively deformable...said support leg having a base leg end, a prong end, and a convexity projecting inwardly between the base leg end and the prong end, wherein the base leg, the support leg, and the convexity are substantially coplanar..."

According to §2143.03 of the MPEP, "[t]o establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art." Applicant respectfully submits that neither Hermes nor Cummins discloses at least the aforementioned feature of Applicant's independent claims 1 and 2 as presently amended.

In particular, it is submitted that the primary citation to Hermes does not disclose the claimed substantially coplanar base leg, support leg, and convexity. Moreover, Hermes does not disclose a selectively deformable base leg. Accordingly, without

conceding the propriety of the asserted combination, the asserted combination of Hermes and Cummins is likewise deficient, even in view of the knowledge of one of ordinary skill in the art.

The primary citation to Hermes relates to a surgical fastening device having a hollow core region from which medicaments are released to tissue at a controlled rate. (Hermes, Abstract and at col. 5, lines 13-34).

The Office Action contends that the Hermes fastening device described as having an upright leg, a base leg, a tissue-piercing tip, and a “rupturable” capillary meets the aforementioned features of independent claims 1 and 2. (Office Action, pages 2-3). This contention is respectfully traversed.

Hermes, at column 2, lines 66-68 and col. 3, lines 1-3, expressly teach that the cored implant maintains its form and function due to the ability of the structural member to function as a beam. Thus, Hermes cannot reasonably be interpreted to disclose the aforementioned features of independent claims 1 and 2.

The secondary citation to Cummins relates to a surgical staple and is cited for its alleged disclosure of a deformable base leg. (Office Action, page 2). Applicant submits that Cummins does not add anything that would remedy the aforementioned deficiency in Hermes. Accordingly, favorable reconsideration and withdrawal of the rejections of independent claims 1 and 2 under 35 U.S.C. §103 is respectfully requested.

According to §2143.03 of the MPEP, “[i]f an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious.” Claims 3-9 depend directly or indirectly from independent claims 1 and 2. Because claims 1 and 2 as amended are patentable, Applicant respectfully submits that claims 3-9 are also

patentable and therefore the rejection thereof under 35 U.S.C. §103(a) should be withdrawn.

CONCLUSION

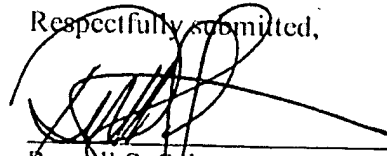
In light of the foregoing, Applicant respectfully submits that independent claims 1-2 and dependent claims 3-8 as currently presented are patentably distinguishable over the cited references and the other references of record. Accordingly, early and favorable consideration of this application is earnestly requested.

Should the Examiner believe that a telephone or personal interview may facilitate resolution of any remaining matters, she is respectfully requested to contact Applicant's attorney at the number indicated below.

Please charge any deficiency as well as any other fee(s) that may become due under 37 C.F.R. § 1.16 and/or 1.17 at any time during the pendency of this application, or credit any overpayment of such fee(s), to Deposit Account No. 21-0550.

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Respectfully submitted,



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